

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231*CG*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/582,871 08/09/00 DEBREGEAS

P 065691/0196

HM12/1015

EXAMINER

FOLEY & LARDNER
WASHINGTON HARBOUR
3000 K STREET NW
SUITE 500 PO BOX 25696
WASHINGTON DC 20007-8696

TRAN.S

ART UNIT	PAPER NUMBER
----------	--------------

1615

DATE MAILED:

10/15/01

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 09/582,871	Applicant(s) Debregeas et al.
	Examiner Susan Tran	Art Unit 1615



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Aug 2, 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on Aug 9, 2000 is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) Other: _____

Art Unit: 1615

DETAILED ACTION

Receipt is acknowledged of applicant's Declaration filed 08/09/00, Information Disclosure Statement filed 08/22/00, and Amendment A filed 08/02/01.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima et al. EP 648529A1.

Fusejima teaches a pharmaceutical granular material coating apparatus comprising rotary drum having cylindrical body portion (2) is formed by partition plates (52) and peripheral surfaces of the frame members (51a and 51b), and nozzle (22) for spraying coating (columns 6 and 12; Figs. 1-3). The coating apparatus further comprising a gas supply duct (31), (column 7, lines 8 through column 8, lines 30). The device is used to produce tablets or granules for pharmaceuticals and food products (column 1, lines 1-5).

Fusejima is silent as to the teaching of the parallel sections (22) of the claimed invention. However, Fusejima does teach and suggest the use of partition plates (52) having peripheral surfaces of the frame members (51a and 51b). Thus, it would have been *prima facie* obvious for

Art Unit: 1615

one of the ordinary skill in this art to, by routine experimentation modifying Fusejima's peripheral surfaces of the frame members (51a and 51b) to obtain the claimed invention, because the reference teaches the advantageous results of gas supply passes through the inner and outer peripheral surfaces to improve the accumulation of coating material onto the granules.

2. Claims 18 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima et al. (529), in view of Fusejima et al. US 5,939,097 (097).

Fusejima (529) is relied upon for the reasons stated above. The reference is silent as to the teaching of the packaging of the granule.

Fusejima (097) teaches a food-like medicine composition comprising granule or particulate that can be incorporated into a gelatin capsule (columns 2-3). Thus, it would have been *prima facie* obvious for one of the ordinary skill in the art to incorporate Fusejima (529)'s granule into the gelatine capsule in view of the teaching of Fusejima (097). The reason for this modification is to obtain a satisfactory product useful in pharmaceutical art.

Response to Arguments

3. Applicant's arguments filed 08/02/01 have been fully considered and is persuasive. The rejected under 35 U.S.C. 102(b) as being anticipated by Fusejima et al. EP 648529A1 for claim 1 has been withdrawn.

Art Unit: 1615

4. Applicant's arguments filed 08/02/01 regarding to the 103(a) rejections have been fully considered but they are not persuasive. The examiner maintains the original 103(a) rejections, and thus, claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fusejima et al. EP 648529A1.

Applicant argues that *neither partition plates nor peripheral surfaces of the frame members are designed to participate in communication between the inside and outside of the cylindrical portion, that is allowing gas to pass through granules*. However, it is noted that the features upon which applicant relies (i.e., allowing gas to pass through granules) are not recited in the rejected claim(s), or at least not recited in the generic claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that *Fusejima provide no hint that peripheral surfaces of the frame members can either form a cylindrical portion or provide a path for allowing gas to pass through granules*. Contrary to the applicant's argument, Fusejima does teach the gas flow through the gas supply duct (31) from the outside to the inside of the rotary drum or from the inside to the outside of the drum (columns 3-4; 6). Furthermore, Fusejima recognizes the properties desired by the applicant regarding to the gas flow throughout the drum, e.g., the cleaning works can be easily performed so that high quality coating can be achieved (column 15, lines 25-37).

Art Unit: 1615

Applicant argues that Fusejima evidences no motivation in the prior art for modifying peripheral surfaces of the frame members to obtain the claimed invention. Contrary to the applicant's argument, the use of the particular parallel section (22) has not been shown to provide any unusual and/or unexpected results since Fusejima obtains the same results desired by applicants, i.e. a granular coating apparatus for tablets, granules and the like useful for pharmaceuticals and food products.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 1615

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-359.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600
[Signature]